STATE OF ARBITRATION

SOUTHERN AFRICA

Report by I-ARB INTERNATIONAL ARBITRATION AFRICA

2017

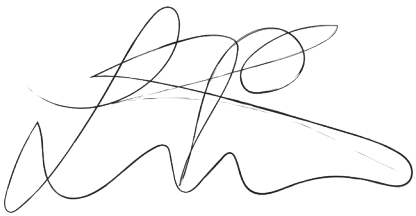
WELCOME NOTE

I am delighted to bring to you the first issue of I-Arb Africa's annual regional report series on Southern Africa. The State of Arbitration report series are based on the presentations of the annual regional conferences complemented with additional research by the I-Arb team. This report is based on the discussions and presentations made during the 1st Southern Africa International Arbitration Conference (2016) held on December 12th and 13th in Pretoria, hosted by the Faculty of Law of the University of Pretoria.

This year's report covers the key topics, notably the **Future of Bilateral Investment Arbitration** and **Asia-Africa Investments and disputes** in the Southern African Development Community (SADC) region. The report also looks at different indicators that measure the competitiveness of SADC countries in terms of doing business and attracting foreign direct investment.

There have been many developments related to international arbitration in Southern Africa. While there are certain reservations on investor-state arbitration, there is interest in encouraging the development of international commercial arbitration as a means of encouraging intra-african investment as well as foreign direct investment. This report also shows that a number of southern African countries do not have an international arbitration act and in some cases there is no separate arbitration act, indicating that there is some work left in building the needed legislative infrastructure.

I would like to thank Leon Gerber and the University of Pretoria for being a wonderful host, as well as all of the speakers, sponsors and delegates at SAIAC 2016 who played a key role in making the event a successful one. I look forward to having you all join us for SAIAC 2017 on November 16 & 17 in Johannesburg!



Leyou Tameru
Founder & Managing Director
I-Arb Africa

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INVESTMENT ARBITRATION: A BALANCING ACT FOR AFRICA

As we discuss arbitration in extractive sectors and the future of Bilateral Investment Treaties in Africa, let's begin by addressing three questions:

1. *What are the stakes?* Recalling the critical role that investment, including Foreign Direct Investment, must play in creating momentum for sustainable development of African economies and why we must continue to harness it;
2. *What are the dynamics in Arbitration globally and in Africa?* And,
3. *How can Africa best prepare for success in investment arbitration?* The approach here will be two pronged: one that focuses on preventing disputes and another that strengthens readiness for arbitration in Africa- including through the active role of pan African institutions at national, regional and continental level.

Arbitration is a reality of our time, so, what are the dynamics in arbitration globally and in Africa?

a closer look at investment in africa shows that Africa is slowly embracing arbitration. Countries such as South Africa and Mauritius have a longer history with arbitration. According to the UNCTAD World Investment Report 2016, in 2015, investors initiated 70 known Investor-State Dispute Settlement (ISDS) cases pursuant to International Investment Agreements, which is the highest number of cases ever filed in a single year. However, as arbitrations can be kept confidential under certain circumstances, the actual number of disputes filed for this and previous years is likely to be higher.

By 2013, 66% of new cases had respondents from developing countries. In 2016, UNCTAD's World Investment Report reveals that the most frequent respondent developing countries including Egypt.

After 2013, (In 2014 and 2015) this trend started to change, with the relative share of cases against developed countries increasing and standing at about 40% as at 2016.

In 2015, Cape Verde, Kenya, Mauritius and Uganda faced their first known Investor-State Dispute claims.

In what some consider a standard trend of disputes following investment decisions, the increase in FDI to Africa has presented a rising number of referred cases to both the International Chamber of Commerce (ICC), which remains the most popular forum for major Africa-related international arbitrations, and the London Court of International Arbitration (LCIA), which continues to gain traction, particularly in English speaking African countries.

However, in recent years African parties to disputes are opting for their own African arbitration centres, or regional options such the Common Court for Justice and Arbitration in west Africa, the Cairo Regional Centre for International Commercial Arbitration (CRCICA) and others in Mauritius and Kigali.

And so Africa is faced with this seemingly contradictory objective- of needing to finance its development- an equation in which FDI will play a key role; and being defendants in mounting arbitration cases- the bleeding effect of which is argued by several analysts, to take critical resources necessary to finance Africa's development out of the continent- in payment of the fruits of judgment from arbitral awards.

How does Africa prepare for the most efficient- pro-African development approach to managing investment arbitration? From Nigerian Banks, to Dangote's cement, from South African and Kenyan retail chains, to Togo's ECOBANK, the footprint of intra-African investment is evident. This is an indication that upcoming disputes will be more intra-african in nature.

The approach must be tampered with the reality that investment, when managed well, can create a powerful and positive effect in breaking the poverty chain- through employment opportunities, localizing technologies key for industrialisation and financial resources from taxation that can be channeled to investment in the public good.

And so with this lens, it seems clear that there are at least three dimensions to breaking the shackles that Africa's hemorrhage with arbitration losses is causing:
Preventive mechanisms- structuring sustainable-development-oriented IIAs; Managing investment presence in a pro-people, pro-development manner- the UNCTAD investment facilitation model; And, building capacity to strengthen the practice of investment arbitration in Africa.

A characteristic feature of several of the investment-related arbitration cases involving African countries is that African governments tend to win on jurisdiction-related issues, while investors win on the merits of the case. This is an indication that the structure/design and content of international investment treaties to which Africa is party becomes a top priority in the search for solutions.

UNCTAD has proposed that IIAs include refined definitions of investment, streamlined provisions on fair and equitable treatment, clarification of what does/does not constitute an indirect expropriation, explicit recognition that parties should not relax health, safety or environmental standards to attract investment and specific proactive provisions on investment promotion and/or facilitation.

These approaches have continued to influence the new generation of BITs- for developed and developing countries alike. South Africa, through its Promotion and Protection of Investment Act is shaping its investment policy in accordance with its objectives of sustainable development and inclusive economic growth17 essentially placing IIAs at the service of development first.

The Southern African Development Community (SADC) Member States are reviewing the 2012 Model Bilateral Investment Treaty Template, as contemplated when the model was completed. The model, launched shortly after the UNCTAD Policy Framework, contains numerous reform-oriented features. SADC is also revising Annex 1 of its Protocol on Finance and Investment with refinements to the definition of investment, clarifications to fair and equitable

treatment and a provision on the right to regulate. In addition, SADC is in the final stages of developing a Regional Investment Policy Framework (IPF).

How can Africa best prepare for success in investment arbitration?

Increasingly, African countries are seeking solutions on the continent for arbitration. There is the view that African countries are in a strong place to get their partners in BITS to accept African systems as points for dispute settlement.

In certain countries, such as Nigeria, their hand has been forced because in disputes with state-sector clients the state will often demand arbitration in a local centre such as the Regional Centre for International Commercial Arbitration – Lagos (RCICAL).

It seems logical that focus should be on strengthening African institutions to handle arbitration claims. This is especially relevant as intra-African investment grows. There would be need to strengthen awareness and understanding of ISDS related issues in domestic courts to make them a credible forum for dispute resolution as the one of the ideas fronted in IIA reform is the usefulness of exhausting local remedies prior to accessing ISDS facility.

A next step would be to continue to build the capacity of existing regional courts. Examples exist in the EAC and in ECOWAS that could be further interrogated to create strengthened functionality for investment-related dispute settlement.

In parallel, we see a dynamism in Africa surrounding the establishment of centres of arbitration. From Lagos, to Kigali, from Mauritius to Kenya, to Cairo, we see the mushrooming of centres bidding to establish themselves as international seats for investment arbitration.

Viability will depend on confidence in the legal infrastructure in these jurisdictions, and whether such confidence will tempt international parties and investors to use them as opposed to the traditional destinations.

UNCTAD has proposed five paths of reform for investor-state arbitration. The first is the promotion of alternative dispute resolution, in particular conciliation and mediation). Secondly,tailoring the existing system through individual IIAs such as adding provisions that set time limits for bringing claims and adding more transparency to the ISDS process. Thirdly, limiting of investor access to ISDS by for example reducing the subject matter scope of claims that can be made under the ISDS mechanism, restricting the range of investors who qualify to benefit from the Treaty. Fourthly, including an appeals facility. This would be a standing body with competence to undertake substantive review of awards and would contribute to ensuring predictability. Lastly establishing a standing International Investment Court as an institutional public good serving the interests of investors, states and other stakeholders. It would replace existing ad-hoc arbitration tribunals and consist of judges appointed by States with fixed contracts.

This is summary of the keynote address at SAIAC 2016. by Dr. Joy Kategekwa, Director of UNCTAD Africa Regional Office.

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

WHAT IS SADC?

The **Southern African Development Community (SADC)** was formally established in 1992 in Windhowek, replacing the Southern African Development Coordination Conference SADCC) that was established by the so-called frontline states in 1980 in Lusaka. Whereas the SADCC had the purpose of pursuing economic policies that would reduce their dependency on apharthed South Africa, SADC had the ambitious goal of developing a regional economic community in which post-apartheid South Africa was subsequently integrated. The SADC is currently composed of 14 member States including Angola, the Democratic Republic of Congo (DRC), Lesotho, Madagascar (currently suspended until constitutional order has been restored). Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The SADC countries have concluded 27 protocols, including the SADC Protocol on Finance and Investment, also known as the Investment Protocol. The Protocol entered into force in April 2010, prohibits nationalization and expropriation of property, and guarantees fair and equitable treatment to investors. The Investment Protocol also provides that an investor and a state party may submit a dispute to international arbitration is one of three ways:

- Arbitration before SADC Tribunal
- ICSID arbitration, and
- Ad Hoc arbitration under the UNCITRAL Arbitration Rules

The SADC Tribunal which began operations in 2005 was suspended in 2010. In 2014, 9 of 14 SADC member states signed on to the new tribunal whose jurisdiction is limited to state to state disputes.
In 2012, SADC engaged the assistance of the OECD in developing a SADC Investment Policy Framework.

Over the next three years the workshops yielded some basic norms including:

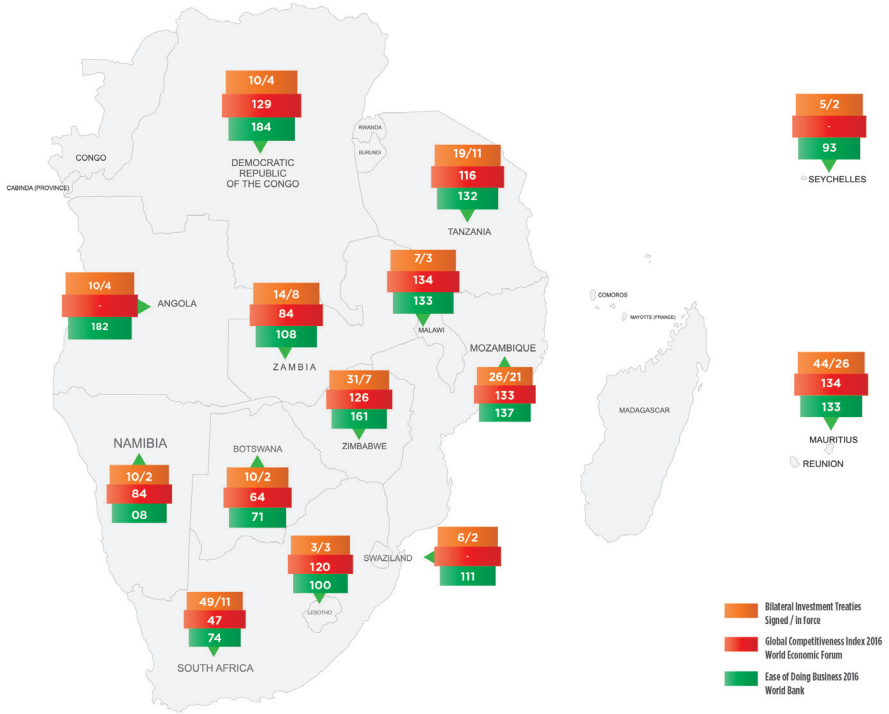
- Strengthening security and protection of investors' property rights;
- Providing well-defined rights for land access and use;
- Reducing and refining restrictions on foreign investment;
- Building a coherent and transparent investment environment.

Despite the limitation of the jurisdiction of the new tribunal and domestic legislation regulating investment disputes, the SADC Protocol provides any investor with qualifying investments in the territory of any member state with uniform protection. This protection may be relied on despite the investor protection in terms of the domestic law of a member state being less than what is provided in terms of SADC Protocol.

There is pressure from South Africa, Botswana, Namibia and other SADC countries to align the level of protection currently afforded by the SADC Protocol with domestic approaches to ensure that SADC as a region has a harmonized approach to the protection of investment. The changes will also provide scope for member states to adopt the Model SADC BITs.

COUNTRY ANALYSIS

INTERNATIONAL COMPETITIVENESS OF SADC COUNTRIES (2016)



COUNTRY ANALYSIS

INCOMING FDI* AND KNOWN ARBITRATION CASES (2015 - 2016)

Angola
Foreign Direct Investment: USD 8.7 Billion, top FDI recipient in Africa
Registered Cases : None

Botswana
Foreign Direct Investment: USD 394 Million
Registered Cases :None

Lesotho
Foreign Direct Investment: USD 169 Million
Registered Cases : Swissbourgh Diamond Mines (Pty) Ltd and others vs. The Kingdom of Lesotho (Award rendered in 2016)

Madagascar
Foreign Direct Investment: USD 517 Million
Registered Cases : Polo Garments Majunga's (PGM)v. Ny Havana (Enforcement decision in 2016)

Malawi
Foreign Direct Investment: USD 143 Million
Registered Cases : None

Mauritius
Foreign Direct Investment: **USD** 208 Million
Registered Cases :

- Thomas Gosling and others v. Republic of Mauritius (2016)
- Dawood Rawat v. Mauritius (2015)

Mozambique
Foreign Direct Investment: USD 3.7 Billion
Registered Cases: Besserglik v. Republic of Mozambique (2015)

*Source UNCTAD 2016 Report

Namibia
Foreign Direct Investment: USD 1.1 Billion
Registered Cases : none

Seychelles
Foreign Direct Investment: USD 195 Million
Registered Cases : None

South Africa
Foreign Direct Investment: USD 1.8 Billion
Registered Cases : Zhongji Development Construction Engineering Co Ltd v. Kamoto Copper Co SARL (2015, Domestic case with cross-border issues)

Swaziland
Foreign Direct Investment: USD 5 Million
Registered Cases : Southern Africa Resources Limited ("SARL") vs Kingdom of Swaziland (2015)

Zambia
Foreign Direct Investment: USD 1.7 Billion
Registered Cases : None

Zimbabwe
Foreign Direct Investment: USD 421 Million
Registered Cases :

- Bernhard von Pezold and others v. Republic of Zimbabwe (Award rendered in 2016)

- Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe (Decision on provisional measures in 2016)

RECENT DEVELOPMENTS (2016)

Protection of Investment Act of South Africa

In November 2015, South Africa passed through parliament the Protection of Investment Act. The Act, which became an Act after signature by the President in December 2015, it is however yet to enter into force.
The Act provides for all investors in South Africa, foreign and local, to enjoy the same status and protection. The aim of the Act is to protect all investment in line with the Constitution "in a manner which balances the public interest and the rights and obligations of investors". As the Bilateral Investment Treaties that South Africa signed with many European countries in 1990s came up for renewal, the government decided not to renew them and replace them with this new Act.

Some of the salient features of the Act are:

- Foreign investors or their investments, must not be treated less favourably thans South Africa investors
- Foreign investors and their investments shall "be accorded a level of physical security as may be generally provided to domestic investors in accordance with minimum standards of customary international law and subject to available resources and capacity"
- Disputes shall be dealt with domestically and al lows for mediation and that the government may consent to international arbitration only after domestic remedies are exhausted

This Bill is in direct conflict with the key provisions of the SADC Protocol, notably fair and equitable treatment, romt market value compensation for expropriation and investor state arbitration. The government has

admitted this and asserted that the Investment Protocol would thus be amended to accord with South Africa's domestic law. As aresult the SADC Investment Policy Framework apparently no longer has any foreseeable date for completion and the project of harmonizing the region's investment regimes has been halted indefinitely

Arbitration Bill of South Africa

This 2016 Bill is based on the UNCITRAL Model Law. Currently, arbitrations are subject to the Arbitration Act No. 42 of 1965. Once it passes, this Bill will make South Africa the 29th African country to base its domestic arbitration legislation on the Model Law.

Clauses of the Bill incorporate the wording of the Recognition and Enforcement of Foreign Arbitral Awards A of 1977 which the Bill expressly states will be repealed once it comes into effect. The Bill binds public bodies and applies to any arbitration in terms of an arbitration agreement in which a public body is a party, according to the provisions of section 12 of Promotion and Protection of Investment Act of 2015- not yet in force.

There is no specific date outlined for the Bill to be passed by parliament, it has been presented before it numerous times and has recently been amended and is expected to be presented in 2017.

Angola signs the New York Convention

Angola has become the 157th State to be a signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral (New York Convention). Resolution 38/2016 was passed on the last session of the parliament and published on the official gazette on August 12. However ratification is still pending, and according to Article XII(2) of the New York Convention, the ratification will take effect on the 90th day after deposit by Angola of its instrument of ratification with the Secretary-General of the United Nations. It is not yet reported that this has taken place.

THE FUTURE OF BILATERAL INVESTMENT TREATIES AND INVESTMENT ARBITRATION

A. THE SADC MODEL BIT

The SADC Model BIT was developed in 2012 by the
The purpose of the model is to promote harmonization of investment policies and laws of Member States and serve as a guide to Governments in future investment negotiations. The model BIT provides guidelines on some of the basic structures of BITs and provides for alternative.

It provides for guidelines in terms of definition of investment and offers three options, i.e. asset based closed list, asset based open list and enterprise based. It excludes MFN and provides for national treatment.

With regards to Fair and Equitable Treatment, it provides for two options. The firs is for FET as it is included in many BITs today and the second option is fair administrative treatment (FAT) which ensures that State's administrative, legislative, and judicial processes do not operate in a manner that is arbitrary. This entails that investors to be notified of administrative decisions that may affect their investment and have the right to administrative review or appeal.

In relation to expropriation, the model BIT provides for three options. The first is that expropriation be in (a) in the public interest;(b) in accordance with due process of law; and (c) on payment of fair and adequate compensation within a reasonable period of time.

It provides for three types of compensation: based on market value, based on a balance between the public interest and interest of those affected and market value.

Although the model BIT does not ban member states from using investor – state mechanism, it provides for an option where states can remove the option of investor-state disputes from their BITs. It provides for an alternative of state – state arbitration.

B. PAN-AFRICAN INVESTMENT CODE

The Pan-African Investment Code is a continent wide treaty developed in 2015, and remains to be adopted by African States, shaping the investment law framework on a continent wide basis. The aim of the code is to foster coherence and consistency with respect to the rules and principles that will govern investment protection, promotion and facilitation on the continent.

The African Union began working on a comprehensive investment code for Africa in 2008, as part of its mandate to enhance economic integration among African States. The PAIC is the result of this effort.
The code has clauses dealing with most favored nation treatment and exceptions to MFN (article 7 & 8), National treatment and exceptions (9 & 10) and expropriation and compensation (article 11)

According to article 42, which deals with investor-state disputes, prescribes that parties first attempt to resolve the dispute peacefully within 6 months at the latest, through different ways including non-binding third party mediations or through consultations. If this fails, parties may resort to exhausting local remedies or to arbitration to be conducted in any established African public or private arbitration center as well as the Permanent Court of Arbitration centers in Africa or African Union Court of Arbitration or African Regional Court if applicable.

C. BILATERAL ARBITRATION TREATIES

A Bilateral Arbitration Treaty is an agreement to be signed between two States and provides a default dispute resolution mechanism, international arbitration, for specified categories of international commercial disputes between nationals of the signatory countries. It does not create new substantive rights or protections for foreign investors nor does it provide for arbitration against the host State.

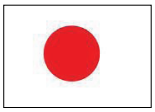
Although BATS do no authorize claims against Sates because of government action or inaction, they fill the dispute resolution gap left out of too many international contracts as evidence suggests that more often than not, these contracts do not contain dispute resolution clauses. BATs seek to reduce the costs and risks of dispute resolution which discourage cross-border trade and investment, particularly by small and medium-sized enterprises.

By filling this gap and prescribing arbitration as a default, BATs helps address the lack of trust and other concerns with cross-border litigation in a counter-party's court such as lack of neutrality, cost and enforceability. Africa currently has the lowest intra-continent trade numbers in the world with intra-Africa trade estimated at at less than 15% of the total trade in the continent. Small and medium businesses play a key role in the continent as they employ 80% of African workforce. BATs can be a great way of establishing investors' confidence, especially for the small and medium businesses, to invest across African borders and create more jobs.

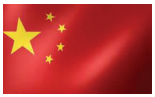
ASIA-AFRICA INVESTMENT AND DISPUTES

FOCUS ON AFRICA-INDIA

India's exports to SADC amounted to 8.4 Billion, and India's imports from SADC amounted to 12 Billion in 2010/11



SADC accounts for half of Japanese investment in Africa and is home to over 100 Japanese companies



Chinese foreign direct investment to SADC amounted to 6,4 Billion in 2011

Much of the discussion related to Asia-Africa investments has been focused on Africa-China, however India is a country with growing investments in the continent. There are currently 2.16 million Indian diaspora living in Africa and the India-Africa relationship is one that spans over a century.

India has seen a phenomenal rise in investment and bilateral trade with Africa in recent years. Africa received US$50 billion in foreign direct investment (FDI) from India in 2014 and in 2015 8% of Indian imports were from Africa. Africa's FDI stock in India was 65.4 billion in 2014.

India is among the top three countries with BITs in force with African countries with 7 BITs, following Republic of Korea which has 13 and China with 20. The top three African countries with BITs in fource with Asian countries are Egypt with 15, Mauritius with 6 and Morocco with 5.

The BITs that India has signed with Egypt, Libya, Mauritius, Morocco, Mozambique, Senegal and Sudan are in force, while the ones signed with the Democratic Republic of Congo, Djibouti, Ethiopia, Ghana, Seychelles and Zimbabwe are yet to enter into force. India is the top investors in Ethiopia, and among the top five in Egypt, Kenya, Mauritius, Mozambique and Kenya.

While China has more BITs with African countries than India, the content of the BITs differ in nature. China-Africa BITs take the model of Europe BITs with Africa while India's BITs are different. In addition, in may 2016, India served notices seeking termination of 57 out of its 82 bilateral investment agreemtns which had either expired or were due to expire soon. For a further 25 treaties which are not close to expiry, India sought

joint statements to clarify ambiguities in treaty texts to avoid expansive interpretations.

India is currently developing a new model treaty which will exclude tax disputes from remit of arbitration and require that investors exhaust local remedies prior to resorting to international arbitration. All of the known India-Africa BIT claims have been brought against India under the Mauritius-India BIT. These were in 2003, 2012 and 2013 by Bechtel Enterprise Holdings Inc., Devas Multimedia Private Limited and Khaitan Holdings Mauritius Limited respectively.

WHERE TO RESOLVE ASIA-AFRICA DISPUTES?

I. THE CHINA-AFRICA JOINT ARBITRATION CENTER

CAJAC is the outcome of conference convened by the China Law Society in Beijing in 2015 to discuss the establishment of a China-Africa dispute resolution mechanism, the Arbitrators Federation of South Africa was invited to put forward proposals and suggestions for the establishment of a center. It was agreed that the responsibility for the development of the center would be entrusted to the Shanghai International Arbitration Center (SHIAC) and to Arbitration Foundation of South Africa (AFSA) and Africa ADR, AFSA's international arm.

CAJAC is governed by an International Guiding Committee consisting of representatives of SHIAC and AFSA. It is chaired by Dr. Gu Zhaomin from the China Law Society. Michael Kuper is the Co-Chair in Africa and in China it is Mr Yang Jianrong, the Director General of SHIAC. The panel of arbitrators chosen for the center had to comply with the basic requirements of the Chinese Arbitration Act.

CAJAC was inaugurated in 2015 at the 6th FOCAC Legal Forum. While convening at the 6th FOCAC, Heads of States of African countries and China

agreed on an Action Plan for the Economic Development of Africa. This Action Plan was signed by China and 50 African States and envisions the establishment of the China-Africa Arbitration Center as part of a win-win policy of cooperation for common development.

CAJAC center has so far administered 1 case. In addition to training and developing African arbitrators, the center aims to develop CAJAC centers in other parts of Africa in cooperation with the international Chinese arbitral centers.

II. THE MAURITIUS INTERNATIONAL ARBITRATION CENTER (LCIA-MIAC)

The LCIA-MIAC Arbitration Centre was established in 2011, with the support of the Government of Mauritius and the London Court of International Arbitration (LCIA). It has quickly established itself as a leading African arbitral institution.

LCIA-MIAC provides, from its headquarters in Mauritius, the same extensive range of dispute resolution services as the LCIA in London, for the benefit of parties doing business in and through Mauritius, in the African region and beyond.

Until 2015, the largest amount of FDI into India came from Mauritius. These two countries share special historical and economic ties. In this regard, Mauritius can emerge as the trusted center to resolve disputes involving Indian and African parties.

III. THE SINGAPORE INTERNATIONAL ARBITRATION CENTER

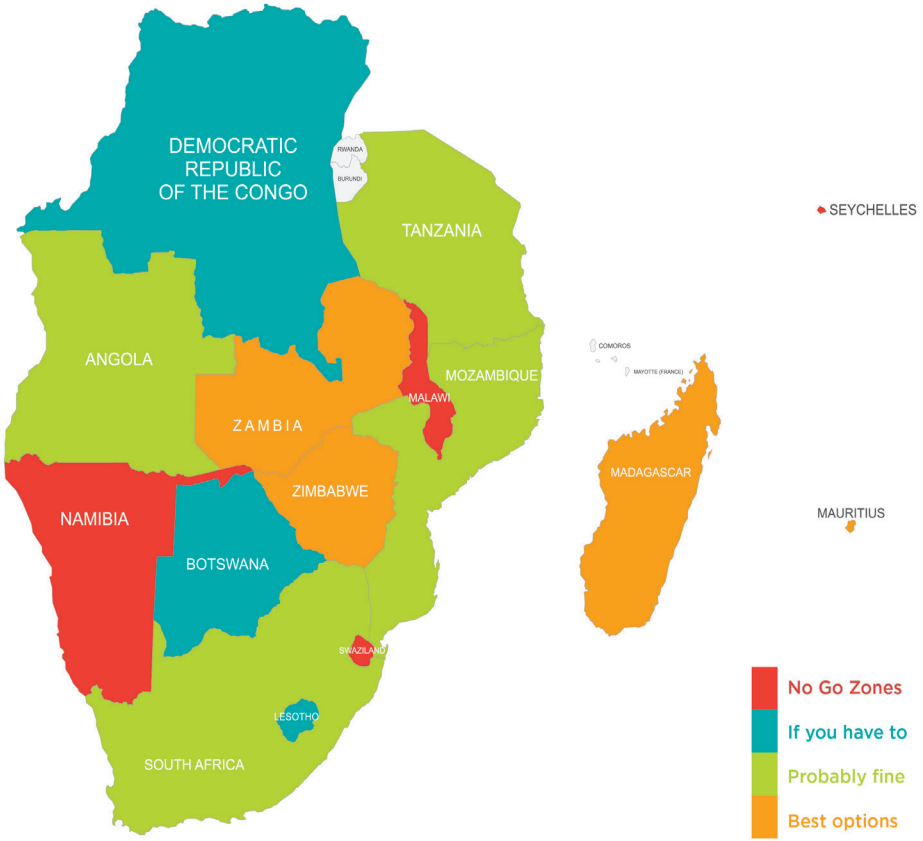
The center commenced operations in July 1991. It is an Independent center and not-for-profit organization. In 2015, 271 new cases were filed and the center currently has approximately 600 active cases.

More than 80% of SIAC's cases are international and 50% have no connection to Singapore. In an effort to better service cases, the center established new rules in august 2016. The new rules provide for changes such as the SIAC Court of Arbitration having to issue reasoned decisions on all challenges to arbitrators, limits the timeframe for appointment of Emergency Arbitrators to 1 day, etc...

SIAC has hosted cases involving African parties. in 2013, it had 13 African parties and the total sum of cases invloving these parties was over USD 310 million. The number of African parties peaked in 2015 reaching 15, and was 7 in 2013.

Between 2013 to 2015, 37% of the disputes involving African parties were commercial, 31% were corporate, 15% were maritime and shipping related, 12% related to trade and 3% related to intellectual property.

LEGISLATIVE REVIEW OF ENFORCEMENT REGIMES OF SADC COUNTRIES



Democratic Republic of the Congo

☐ Separate Arbitration Act
☐ International Arbitration Act
☐ Independent Model Law incorporation
☑ Member of OHADA,Model Law is applicable through the Uniform Arbitration Act
☑ Party to the New York Convention
☐ Principle of reciprocity

Tanzania

☑ Arbitration Act
Cap 15, Civil procedure Code 2002,.
☐ International Arbitration Act;
☐ Based on UNCITRAL Model Law
☑ Party to the New York Convention
☐ Reciprocity

Malawi 

☑ Arbitration Act 1967;
☐ International Arbitration Act
☐ Based on UNCITRAL Model Law
☐ Party to New York Convention

Zambia 

☑ Arbitration Act 19 of 2000;
☐ International Arbitration Act
☑ Based on UNCITRAL Model Law (with modifications)
☑ Party to New York Convention
☐ Reciprocity

Angola 

☑ Voluntary Arbitration Law 2003
☑ Institutional Arbitration Decree (Supplementary Legislation);
☐ International Arbitration Act
☐ Based on UNCITRAL Model Law
☐ Party to New York Convention (yet), acceded on 12 August 2016*

Mozambique 

☑ Law on Arbitration, Conciliation and mediation 1999
☐ International Arbitration Act
☐ Based on UNCITRAL Model Law*
(Argument that LACM is based largely on Model Law)
☑ Party to the New York Convention

Madagascar 

☑ Arbitration Act 1998 (updated2003)
☐ International Arbitration act
☑ Based on UNCITRAL Model Law
☑ Party to New York Convention
☐ Reciprocity

Zimbabwe 

☑ Arbitration Act 1996
☐ International Arbitration Act
☑ Based on UNCITRAL Model Law
☑ Party to New York Convention

Botswana 

☑ Arbitration Act 1959
☑ Recognition and enforcement of foreign arbitral awards Act
☐ Based on UNCITRAL Model Law
☑ Party to New York Convention but selective application.
☐ Reciprocity*
(it would appear)

Namibia 

☑ Arbitration Act1965
☐ International Arbitration Act
☐ Based on UNCITRAL Model Law
☐ Party to New York Convention

Mauritius 

☑ International Arbitration Act

☑ Convention on the recognition and enforcement of Foreign Arbitral Awards Act
☑ Based on UNCITRAL Model Law
☑ Party to the New York Convention

Seychelles
☐ Arbitration Legislation
☐ Code of Civil Procedure
☐ Based on UNCITRAL Model Law
☐ Party to New York Convention*
(But certain principles of the NYC are incorporated in Civil Code).

Swaziland
☐ Arbitration Act 1904
☐ Based on UNCITRAL Model Law
☐ Party to New York Convention

Lesotho
☑ Arbitration Act 1967
☐ International Arbitration Act
☐ Based on UNCITRAL Model Law
☑ Party to the New York Convention

South Africa
☑ Arbitration Act 1965
☐ International Arbitration Act
☑ Recognition and enforcement of foreign arbitral awards Act
☐ Based on UNCITRAL Model Law
☑ Party to New York Convention

Speakers at SAIAC 2016

Hon. Justice Shaheda Peeroo
Ret. Judge/Consultant, Peeroo Chambers
Hon. Justice Edward Torgbor
Ret. Judge/Arbitrator
Peter Leon
Partner, Herbert Smith Freehills
Theresa Ross
Department of Justice, South Africa
Amanda Dakoure
Counsel, African Legal Support Facility
Lindi Nkosi-Thomas Sc
Senior Counsel, Thulamela Chambers
Prof. Zackary Douglas
Arbitrator
Javade Chaudri
Partner, Jones Day
Prof. Makane Mbengue
University of Geneva
Steve Finizio
Partner, Wilmer Cutler Pickering Hale and Dorr (WilmerHale)
Jackwell Feris
Director - Dispute resolution , Cliffe Dekker Hofmeyr
Kevin Nash
Deputy Registrar, Singapore International Arbitration Center
Ndanga Kamau
Registrar, Mauritius International Arbitration Center (LCIA-MIAC)
Deline Beukes
China-Africa Joint Arbitration Center /ADR Africa
Jonathan Ripley-Evans
Director, Cliffe Dekker Hofmeyr
Grant Herholdt
Director, ENS Africa
Penny Martin
Senior Associate, Three Crowns
Dr. Joy Kategekwa
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